

U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
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Covington, Louisiana 70433

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Issue Date: 07 June 2007

Case No.: 2006-CER-1

IN THE MATTER OF

**JERRY YARBROUGH,
Complainant**

vs.

**FIELD SUPPORT SERVICES, INC.,
Respondent.**

Case No.: 2006-CER-2

IN THE MATTER OF

**CAROL LOWMAN,
Complainant**

vs.

**FIELD SUPPORT SERVICES, INC.,
Respondent.**

**RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING CASE**

This proceeding arises under the employee protection provisions of the Clean Air Act (CAA),¹ the Comprehensive Environmental Response Compensation and Liability Act (CERCLA),² the Federal Water Pollution Control Act (FWPCA),³ the Safe Drinking

¹ 42 U.S.C. § 7622.

² 42 U.S.C. § 9610.

³ 33 U.S.C. § 1367.

Water Act (SDWA),⁴ the Solid Waste Disposal Act (SWDA),⁵ and the applicable regulations⁶ brought by Jerry Yarbrough and Carol Lowman (Complainants) against Field Support Services, Inc. (Respondent).

On 04 Apr 06 OSHA issued a determination, finding that it was unable to conclude that this case involved an environmental concern protected under the above-named acts or that discriminatory considerations were a factor in discharging Complainants. Complainants appealed the OSHA decision and asked for a hearing before the Office of Administrative Law Judges (OALJ) on 17 Apr 06. The hearing was set for 02 Jul 07, but the parties notified the Court that it had reached a settlement. On 15 May 07, the parties filed an unopposed motion to dismiss and notice of settlement. The parties did not provide the Court with a copy of the settlement agreement.

On 22 May 07, the Court informed the parties that although a settlement does not have to be approved under CERCLA, FWPCA or SWDA,⁷ the Court must approve a settlement agreement under CAA and SDWA.⁸ Therefore, the parties submitted the settlement documents for approval on 31 May 07. The scheduled hearing was also cancelled in light of the settlement.

The Settlement Agreement provides that this case be dismissed with prejudice. In addition, paragraph 6 of the Settlement Agreement provides that Complainants and their respective spouses, attorneys, and tax/financial advisors will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions. The parties also agreed that Respondent would be harmed and damaged if the confidentiality provision is not adhered to.

Because the OALJ is a government agency, and this case is a public proceeding, the parties' submissions in this case, including the Settlement Agreement, become a part of the record and are subject to the Freedom of Information Act (FOIA).⁹ FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under FOIA.¹⁰

⁴ 42 U.S.C. § 300j-9.

⁵ 42 U.S.C. § 6971.

⁶ 29 C.F.R. Part 24.

⁷ See *Jones v. EG&G Defense Materials, Inc.* ARB No. 01-039, ALJ No. 1995-CAA 3 (ARB Mar 13, 2001); *Sayre v. Alyeska Pipeline Service Co.*, ARB Nos. 99-091, 99-092, ALJ No. 1997-TSC-6, slip op. at 2 n.1 (ARB Sep. 30, 1999) (the complaint also included TSCA and CAA complaints, which do require Secretarial approval; thus, the ARB reviewed the settlement agreement); *Marcus v. U.S. Environmental Protection Agency*, ARB No. 99-027, ALJ Nos. 1996-CAA-3, 1996-CAA-7 (Oct. 29, 1999) (FWPCA, CERCLA, SWDA settlements do not require Secretarial approval).

⁸ See 42 U.S.C. § 7622(b)(2)(A); *Beliveau v. Naval Undersea Warfare Center*, ARB Nos. 00-073, 01-017, 01-019, ALJ Nos. 1997-SDW-1, 1997-SDW-4, 1997-SDW-6 (ARB Nov. 30, 2000).

⁹ 5 U.S.C. § 522 (1988).

¹⁰ *Gerald Fish v. H & R Transfer*, ARB No. 01-071, ALJ Case No. 00-STA-56 (ARB Apr. 30, 2003).

I have reviewed the Settlement Agreement and find it is a fair, adequate, and reasonable settlement of Complainant's claims under the employee protection provisions of CAA, CERCLA, FWPCA, SDWA and SWDA, and I grant the joint motion and approve the Settlement Agreement.

For good cause shown:

IT IS ORDERED that the motion for order approving the Settlement Agreement and Release is **GRANTED** in its entirety;

IT IS FURTHER ORDERED that the Settlement Agreement and Release represent a fair, adequate, and reasonable settlement for all parties involved in this case;

IT IS FURTHER ORDERED that the Settlement Agreement is designated and shall be handled as confidential.

IT IS FURTHER ORDERED that the Settlement Agreement shall have the same force and effect as if an Order had been made after a full hearing;

IT IS FURTHER ORDERED that the entire record herein shall be solely based upon the complaint, order of reference and notice of administrative determination, and the Settlement Agreement in the case herein;

IT IS FURTHER ORDERED that the parties herein each waives the right to any further procedural steps before me and the right to challenge or contest the validity of the order entered into accordance with the Settlement Agreement; and

IT IS FURTHER ORDERED that this case is **DISMISSED** with prejudice.

So ORDERED.

A

PATRICK M. ROSENOW
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the administrative law judge’s Recommended Decision and Order. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file your Petition with the Board, you must serve it on all parties to the case as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 24.8(a). You must also serve copies of the Petition and briefs on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge’s recommended decision becomes the final order of the Secretary of Labor. *See* 29 C.F.R. § 24.7(d).